was seen in Kuala Selangor town. They were doing nothing unlawful. They were apparently stopped by a detective who took them to the police station and on searching the baggage of the accused a dagger was found in his suitcase. The accused is as far as the police are aware of good character. They neither know nor suspect anything to his detriment and he has had no previous convictions for any criminal offence.

There appears to me to be two fatal errors in the conduct of this case. Section 6(1) of the Ordinance reads:

"Any person who in any public road or place carries or has in his possession or under his control any offensive weapon otherwise than with lawful authority or for a lawful purpose shall be guilty of an offence and on conviction be liable to imprisonment for a term not exceeding two years, and to whipping."

Before therefore any person can be convicted under this section the Court must be satisfied that an accused person found in a public place with an offensive weapon possesses it "otherwise than with lawful authority or for a lawful purpose". As I understand the words "otherwise than with lawful authority", they apply to members of the armed forces or others who by virtue of their occupation have to carry arms or things which could be used as an offensive weapon. Those words therefore do not apply in this case. What does apply in this case is that the Court must be satisfied on all the evidence that the accused was in possession of this dagger otherwise than for a lawful purpose.

It is perfectly true that section 6(2) of the Ordinance places the onus of proving the existence of a lawful purpose on the accused but the extent of proof needed to shift this onus is lighter than that which is placed on the prosecution to prove its case.

I know of no provision of law which says that offensive weapons other than firearms require licences. Mere possession of an offensive weapon in a public place is therefore not an offence. Possession in a public place only becomes an offence when it is for otherwise than for a lawful purpose. The facts of this case do not establish that the accused in fact had this weapon otherwise than for a lawful purpose.

The second error in these proceedings arises from the fact the Magistrate apparently thought he was proceeding under section 23(1) of the Minor Offences Ordinance. This section has been repealed by section 12 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance 1958. The repealed section provides that any person who not being a member of the armed forces of the Crown and certain other persons named therein goes armed with any offensive weapon in any public road shall be liable to the punishment provided in the section. The phrase "who goes armed" is very different from the phrase has in his possession or in his control any offensive weapon otherwise than for a lawful purpose and if the Magistrate thought he was acting under the Minor Offences Ordinance, the nature of the charge could not have been explained to the accused. Section 173(a) of the Criminal Procedure Code makes it mandatory that the charge be read and explained to him. Had the Magistrate explained the charge and what constituted the offence to the accused he would obviously have pleaded not guilty because he had the dagger in possession for a lawful purpose namely because he was moving his belongings from Kuala Lumpur to Kuala Selangor in a perfectly legitimate manner and the law does not make the mere possession of a dagger an offence *per se*.

The accused clearly did not understand the nature of the offence charged against him and therefore his plea of guilty was recorded without the accused knowing what constituted the offence. In these circumstances the accused was not properly convicted.

The conviction and sentence are quashed and the fine must be repaid. The dagger must also be returned to the accused.

Conviction and sentence quashed.

STATE OF TRENGGANU v. TENGKU WOK AISHAH & ORS.

[O. C. J. (Moor J.) November 3, 1949]

[Kuala Trengganu — Originating Summons No. 23 of 1949]

Land Laws — Concession — Words of limitation — Entailed interest — Surrender of land in consideration of cash and pension to grantees and "waris² keturunan zuriat kedua-nya" — Construction.

In 1907 the Ruler of Trengganu granted certain lands to Tengku Abu Bakar and his wife Tengku Khadijah as owners and to their *"waris² keturunan zuriat kedua-nya"* for ever. The two grantees surrendered the lands back to the Government of Trengganu in 1923 in consideration of $12,000 and a pension to themselves and their *"waris² keturunan zuriat kedua-nya"* for ever. There were no issues of the marriage; but there were other descendants of Tengku Abu Bakar claiming through his two daughters by another wife. The original grantees being dead the applicant contended that it was no longer under an obligation to pay the pension referred to on the ground that although there did exist descendants of Tengku Abu Bakar, the respondents, none of them was descendant of Tengku Khadijah.

Held: the words of limitation *"waris² keturunan zuriat kedua-nya"* mean "descendants of either of them" and therefore the respondents were entitled to receive the pension, being descendants of Tengku Abu Bakar.

Per curiam: If the Government of Trengganu is correct in its view of the meaning of these words (*"waris² keturunan zuriat kedua-nya"*), then it follows that in effect the Ruler in the year 1907 was granting out land for an estate which in English law would be called an estate in tail special; and touching which the old common law had been effected by the Statute *De Donis Conditionalibus*. No reason could be advanced by counsel for the Government as to why in the year 1907 a Muslim Ruler in a Muslim Malay State should be creating estates in land of such striking resemblance to a totally foreign land system grown up in feudal times.

Case referred to:—

(1) *Commissioner of Stamps* v. *Oei Tjong Swan* [1933] M.L.J. 107 at p. 109; [1933] S.S.L.R. 436; [1933] A.C. 378.

ORIGINATING SUMMONS.

L. A. Massie (Federal Counsel) for the applicant.

Maidin bin Mohd. Ibrahim for the respondents.

Moor J.: In the year 1325 A.H. (= A.D. 1907) the Ruler of Trengganu granted certain lands (known later as the Chemuak Concession) to Tengku Abu Bakar bin Almarhum Tengku Abdul Jalil and his wife Tengku Khadijah binte Almarhum Sultan Ahmad as owners and to their *"waris² keturunan zuriat kedua-nya"* for ever. In the year 1341 A.H. (= A.D. 1923) the two grantees surrendered the land back to the Government of Trengganu in consideration of $12,000 and a pension to themselves and their *"waris² keturunan zuriat kedua-nya"* for ever. The words of limitation are, therefore, the same in each deed. It is common ground that there was no issue of the marriage of Tengku Abu Bakar and Tengku Khadijah; but that there are other descendants of Tengku Abu Bakar claiming through his two daughters by another wife. In these circumstances, the two original grantees being now dead (Tengku Abu Bakar in 1933 and Tengku Khadijah in 1938) the Government of Trengganu contends that it is no longer under an obligation to pay the pension referred to in the deed dated 21st July 1923 on the ground that although there do exist descendants of Tengku Abu Bakar, to wit, the respondents, none of them is a descendant of Tengku Khadijah. The respondents contend that the words of limitation merely mean "descendants of either of them" and that they are therefore entitled to receive the pension, being descendants of Tengku Abu Bakar. In my view the construction placed on these words of limitation by the respondents is correct, and the one sought for by the Government of Trengganu incorrect. For these reasons:—

(a) it follows from Ex. P2 that in the year 1923, when the pension was first granted, Tengku Khadijah was 68 years old. She would therefore almost certainly be incapable of bearing a child. It seems to me incredible that the parties could have entered into a solemn deed the essence of which was based on the happening of an impossible event. If the then Government intended to restrict the grant of the pension in the sense now suggested, any reference to descendants of this marriage was redundant and nonsensical; there could be no such descendants. A pension "for life" would have met the case; yet it speaks of "in perpetuity".

(b) but as reference to descendants was made, it is necessary to look for such sensible meaning as the words are capable of bearing. In my view the meaning advanced by the respondents is the only sensible one.

(c) if it is sought to suggest that the words in question were inserted in the deed of 21st July 1923 by oversight or *'per incuriam'* then the answer is that that line of approach to a problem of construction is a dangerous one — judgment of Lord Macmillan in *Commissioner of Stamps* v. *Oei Tjong Swan*[1].

(d) the words of limitation in the two deeds (the grant of the land and the grant of the pension) are indentical, and were no doubt meant to mean the same in each case. If the Government of Trengganu is correct in its view of the meaning of these words, then it follows that in effect the Ruler in the year 1907 was granting out land for an estate which in English Law would be called an estate in tail special; and touching which the old common law had been effected by the Statute *De Donis Conditionalibus (Halsbury's Laws of England (Hailsham)* vol. 27 page 668). No reason could be advanced by counsel for the Government as to why in the year 1907 A.D. a Mohammedan Ruler in a Mohammedan Malay State should be creating estates in land of such striking resemblance to a totally foreign land system grown up in feudal times. On the other hand, I was assured that these words were then common form in Trengganu for grants of land; and indeed Ex. D1 dated 1324 A.H. (= 1906 A.D.) is an example. It seems to me highly improbable that the Ruler of Trengganu was habitually indulging in the creation of estates in tail special or that that was the policy of the then Government in alienating State land. Moreover, the land grant was made "absolutely" (*menjadi hak milek*); these would be wholly inappropriate words of limitation for an interest akin to an estate in tail special. Further, the witness H. Ahmad Fuad suggests that in order to create an estate tail one would use different Malay words from those used in the deed under discussion.

(e) exhibit D2 affords considerable light on the meaning given at that time to the words in dispute. It was executed *the very same day* as the deed I am now asked to construe. It gave a pension to three people (a brother and his two sisters) *"warith² keturunan zuriat ketiga-nya"* for ever. There can be no question here of the "issue of a union" of a brother and two sisters. It shows that the numeral adjectives (*"ketiga"*, *"kedua"*) are being used in the sense "of any of the three" "of either of the two" etc. It seems to me incredible that the State Secretary, Trengganu was in two deeds executed *on one and the same day* making in one deed a completely different use of these numeral adjectives from that in the other deed.

(f) I also derive considerable support (Exhibit D4) from the fact that a Malay Judge in the year 1943 A.D. judicially construed these very same words (*waris² keturunan zuriat kedua-nya*) also applied to a husband and wife (Exhibit D3, translation D3A) in the same sense as I now adopt.

Order accordingly.